## NG CHWEE PUAN v. REG.

[A. Cr. J. (Brown, J.) April 2, 1953]

[Singapore — Magistrate's Appeal No. 209 of 1952]

*Municipal Ordinance, s. 58(2) — Motor Garage Bye-laws s. 13 — "Liable" — Meaning of — Trial of more than three offences together —Criminal Procedure Code s. 174(1).*

In this case the appellant was charged with using premises as a garage without a licence and also with five other offences of continuing to use the said premises as a garage without a licence. All the charges were dealt with at the same trial. The appellant pleaded guilty and the learned Magistrate held that he had no discretion under section 13 of the Motor Garage Bye-laws and had to impose a penalty of $10 a day for the continuing offence. Section 13 of the Motor Garage Bye-laws reads as follows: "Every person who shall offend against any of the foregoing Bye-laws shall be liable for every such offence to a fine not exceeding twenty-five dollars or in the case of a continuing offence to a fine of ten dollars for every day during which the offence is committed".

**Held:** (1) the Court has a discretion in fixing the penalty under section 13 of the Motor Garage Bye-laws and can impose a penalty not exceeding $10 a day for a continuing offence; (2) although the trial of the six charges together contravened section 174(1) of the Criminal Procedure Code, there was in this case in effect one continuing offence and the division of this one continuing offence into separate charges had not caused any confusion to the appellant.

*Case referred to:—*

(1) *R. v. Subrahmania Ayyar* L.R. 28 I.A. 257.

MAGISTRATE'S APPEAL.

*Ahmad Ibrahim* for the appellant.

*A. V. Winslow* (Crown Counsel) for the respondent.

**Brown, J.** : — In this case the learned Magistrate was no doubt misled by the imperfect drafting of the bye-law, which makes a person liable to a fine *not exceeding* $25, or in the case of a continuing offence *to a fine of* $10 a day. Thus it appears to exclude the words "not exceeding" in the case of a continuing offence, and the learned Magistrate considered that he was bound to fine the appellant the $10 a day for which he was liable. But the word "liable" contains no obligatory or mandatory connotation. Sitting in this Court, with a table fan blowing directly on to me, I am "liable" to catch a cold. But it does not follow that I shall. Moreover it would be strange if the Legislature had intended, by section 58(2) of the Municipal Ordinance, to empower the Municipal Commissioners thus to fetter the Courts, and no such intention can be read into that sub-section. It is to be observed that drafting of the sub-section is different to the drafting of the bye-law, and that in the sub-section the words "shall not exceed" govern the twenty-five dollars for the continuing offence as they govern the two hundred and fifty dollars for the one offence. In the imperfectly drafted bye-law the form of the sub-section of the Ordinance has not been followed, and the insertion of the words "to a fine of" between the words "continuing offence" and the words "ten dollars" has led to this confusion.

By section 174(1) of the Criminal Procedure Code a person may be charged with three offences of the same kind only. Here he was charged with six. I considered the Privy Council case of *R. v. Subrahmania Ayyar*[1] which decided that the trial of several offences in contravention of the provisions of section 174 was an illegality which could not be remedied by section 448. Not without some doubt, I distinguished that case from the present case upon the ground that here there was one continuing offence, which continued from 24th December 1951 to 18th August 1952, and that the appellant had in effect pleaded guilty to one continuing offence, which (though illegally divided into six separate charges) could have caused him no confusion.

I therefore substituted a conviction for one continuing offence; and I substituted a fine of $745 for the fine imposed.

*Order accordingly.*